IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 15, 2008 Session

MARY ELIZABETH FREEMAN v. SUZETTE McCOY, ET AL.

Appeal from the Chancery Court for Dekalb County
No. 2006-129 Ronald Thurman, Chancellor

No. M2007-01798-COA-R3-CV - Filed October 13, 2008

This is a suit for breach of contract and, in the alternative, for quantum meruit compensation brought by a caretaker against her aunt and her aunt's conservatorship. The plaintiff alleges that at the request of her uncle, who is now deceased, she had taken care of her mentally disabled aunt. In return, she alleges that she, her aunt, and her uncle agreed that the aunt and uncle would deed her their house to compensate her for her services. Plaintiff contends that, although her uncle gave her a gift of $20,000, she was not compensated as the parties had agreed she would be. Following a hearing, the trial court determined that there was an agreement between the plaintiff and her aunt and uncle that the compensation for the services the plaintiff rendered would consist of a bequest of their house to her upon their deaths, rather than a transfer of the house to her while either of them was still alive. The trial court further ruled that the $20,000, which the plaintiff alleged was a gift from her uncle, was, in fact, not a gift and granted the defendants a judgment against the plaintiff in such amount. Upon our determination that the evidence does not preponderate against the trial court's findings, its judgment is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Cause Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and ANDY D. BENNETT, J., joined.

Michael R. Giaimo, Cookeville, Tennessee, for the appellant, Mary Elizabeth Freeman.

Joy Buck Gothard, Cookeville, Tennessee, for the appellee, the Conservatorship of Suzette McCoy.

OPINION

I. Background

Mary Elizabeth Freeman is the niece of Vibert McCoy, who died in August of 2006, and his widow, Suzette McCoy, who is mentally incompetent and currently resides in an assisted living facility. In December of 2006, Ms. Freeman filed a complaint in the Chancery Court for Dekalb County, against the conservatorship of Suzette McCoy, Upper Cumberland Development District Office of the Public Guardian, and Lisa Trammel in her capacity as conservator, fiduciary and/or agent for Suzette McCoy. The complaint sought a judgment in the amount of $265,022.90 and, inter alia, alleged that, in June of 1994, Mr. McCoy requested that Ms. Freeman assist him in the care of Mrs. McCoy "due to his declining health and [Mrs. McCoy's] mental paranoia, schizophrenia, and dementia which placed [her] in a disabling condition." The complaint alleged that in compliance with such request, from June of 1994 until August of 2006, Ms. Freeman provided "services, care, and assistance" to Mrs. McCoy, and generally attended to Mrs. McCoy's "daily business, physical, mental, social, and health needs," allowing her to avoid placement in a residential facility "which would have depleted her estate and cost thousands of dollars per month." The complaint further alleged that there was a valid oral contract between the McCoys and Ms. Freeman to the effect that Ms. Freeman would receive compensation for her services, to include a house and lot owned by the McCoys, located in Cookeville, Tennessee. In the alternative, upon a determination that there was no enforceable contract between herself and the McCoys, the complaint requested that Ms. Freeman be allowed quantum meruit compensation for the care she provided Mrs. McCoy. Finally, the complaint alleged that the only compensation Ms. Freeman received was $20,000. The defendants' answer to Ms. Freeman's complaint denied that there was any agreement whereby the McCoys had agreed to compensate her for services rendered in the care of Mrs. McCoy, denied that the $20,000 was a gift, and countersued for, among other things, recovery of $25,000, which included the alleged gift of $20,000.

Upon trial of the case and based upon the testimony of various witnesses, the trial court determined that there was a meeting of the minds between Ms. Freeman and the McCoys whereby it was agreed that the compensation Ms. Freeman would receive for services performed in the care of Mrs. McCoy would consist of the house in Cookeville, to be left to Ms. Freeman after the deaths of both Mr. and Mrs. McCoy. The trial court found that the McCoys complied with this agreement by having their wills drafted to provide that Ms. Freeman receive the house upon their deaths. The trial court further found there was no agreement that Ms. Freeman would be deeded the house while the McCoys were living, and therefore, Ms. Freeman's claim to obtain the house was premature, given that Mrs. McCoy was living at the time of trial. The trial court found that Ms. Freeman failed to present proof to show her entitlement to payment from Mrs. McCoy's conservatorship, based either upon breach of contract or quantum meruit. And finally, the trial court found that the $20,000 Ms. Freeman claimed she was given by Mr. McCoy was not, in fact, a gift and accordingly, allowed the defendants a judgment against Ms. Freeman in that amount. Ms. Freeman appeals.

II. Issues

We address the following issues:

1) Whether the trial court erred in finding that Ms. Freeman and the McCoys agreed that they would compensate Ms. Freeman for her services by providing that she receive the house in Cookeville upon their deaths, rather than that she be deeded the house while either of them was still living.

2) Whether the trial court erred in failing to award Ms. Freeman quantum meruit compensation.

3) Whether the trial court erred in awarding the defendants a judgment against Ms. Freeman in the amount of $20,000.

III. Analysis

A. Standard of Review

In a non-jury case such as this one, we review the record de novo with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless there is evidence which preponderates to the contrary. Tenn. R. App. P. 13(d); ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to the trial court's factual findings. ***Seals v. England/Corsair Upholstery Mfg. Co.,*** 984 S.W.2d 912, 915 (Tenn. 1999). In regard to the trial court's assessment of witness credibility, the Tennessee Supreme Court has further stated as follows:

> Unlike appellate courts, trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. Accordingly, appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary.

Wells v. Tenn. Bd. of Regents, 9 S.W.3d 779, 783 (Tenn. 1999) (citations omitted). The trial court's conclusions of law are accorded no presumption of correctness. ***Campbell v. Fl. Steel Corp.,*** 919 S.W.2d 26, 35 (Tenn. 1996); ***Presley v. Bennett***, 860 S.W.2d 857, 859 (Tenn. 1993).

B. Contract

We begin with Ms. Freeman's argument that the trial court erred in finding that there was a contractual agreement between herself and the McCoys that her compensation for the care she gave

Mrs. McCoy over the years would consist of the bequest of the McCoys' Cookeville house upon the McCoys' deaths.

It is well-established under the law of this state that whether a contract is deemed to be express, implied, written, or oral, to be enforceable it "must result from a meeting of the minds in mutual assent to terms, must be based upon sufficient consideration, must be free from fraud or undue influence, not against public policy and must be sufficiently definite to be enforced." ***Klosterman Dev. Corp. v. Outlaw Aircraft Sales, Inc.***, 102 S.W.3d 621, 635 (Tenn. Ct. App. 2002). In the instant matter, the trial court stated its findings that "the parties had an understanding, an agreement, or a contract, whatever you want to call it" and further noted the terms of such agreement and its fulfillment as follows:

> [Ms. Freeman] did provide a lot of care to [the McCoys], although there is a presumption that it is gratuitous and for love and affection, but over time, I think that it is pretty clear that the McCoys, when they died, they wanted Ms. Freeman to have this house. I think, ultimately, if there is a meeting of the minds, that is what the meeting of the minds was; once they are both dead, that she should have this house, and I think they took steps to comply with this.
>
> . . .
>
> I think they have complied with their end of the bargain. They drew a will, and if that house was there when they both are gone after they are taken care of, she gets the house, and I think they have complied with it. I don't think there is anything beyond that. I think, if there is compensation, that is the compensation she is entitled to.

Our review of the record reveals substantial evidence that supports the trial court's conclusion that it was the McCoys' intent that Ms. Freeman receive the house upon their deaths.

First, in this regard, we note the following testimony of Ms. Freeman's husband, Richard Freeman, that the McCoys said they wanted Ms. Freeman to have the house when they were dead:

> Q. Do you remember Mrs. McCoy saying anything about Elizabeth having the house in Cookeville?
>
> A. Yeah.
>
> Q. Well, tell us if you would.
>
> A. She told [Ms. Freeman] that she was in the will, and it was willed over to her, and she wanted her to have it.

Q. Did she say anything about it being conveyed any other way other than by will?

A. She just said she wanted her to have the house and the cars. You know, we helped them go get cars; and she said that she wanted her to have them, too; but I don't know.

Q. Did you hear Mr. McCoy say anything about the house?

A. Yeah. He said the same thing. He said he wanted her to have the house in Cookeville.

Although Ms. Freeman now alleges that the McCoys intended to deed the house to her during their lives, her prior deposition testimony was inconsistent in that regard. She affirmed such testimony at trial as follows:

Q. . . . And you testified today that Mr. McCoy told you that he would deed you this house if you would come and help him.

A. Yes.

Q. But that's not what you told me in your deposition, is it?

A. I told you they wanted me to have the house.

Q. In your deposition, on page 16, I questioned: "When Mr. McCoy asked you to come and help back at the very beginning, did he tell you they wanted to give you the house then; or was it after you had been here and helped for awhile"? And you answered: "It was after. We had discussed it after we had been here awhile. They made out a will."

A. Yeah, they did make out a will.

Q. That's your testimony at deposition.

A. Yes.

Q. I asked you again on page 26: "Question: Did you ever ask him about paying you something for coming over and helping like you were doing?" "Answer: Well, that was the agreement about the

> house. I mean, that's why I'm so obligated to him. You know, if somebody was leaving you their home, wouldn't you feel obligated and you would appreciate it and you would want to help them out?"
>
> A. Yes. But they did tell me over and over they were going to have the house – this is their very words – put in my name for everything that I had done for them over the years. And I didn't want to keep pushing it, you know, ask them when they were going to put it in my name and act like that – they were both ill. She was mentally ill, and he was sick.
>
> Q. Well, they expected you to inherit it because they wrote those wills, didn't they?
>
> A. Um-hum [affirmative response].

Additional proof showing that the McCoys intended that Ms. Freeman receive the house after they died is found in the testimony of Dorothy Cripps, an acquaintance of both Mr. and Mrs. McCoy, who testified that Mr. McCoy told her, "When something happens to us, Elizabeth will get what we have." And another acquaintance of the McCoys, Kenneth Cabral, similarly testified as follows:

> Q. . . . I believe, when I asked you about any understanding that you were aware of, anything that you knew of your personal knowledge about Mrs. Freeman's right to receive anything, and you told me that you understood that they had included her in their wills.
>
> A. That was my understanding. I never read the wills, but, you know, [Mr. McCoy] would speak now and then about [Ms. Freeman] would have the house, you know, that she was living in at the time here in Cookeville, and things like that.

Further, Ms. Freeman testified that, although she lived in Jackson County during the early years she cared for Mrs. McCoy, in September of 2000, she moved to Cookeville, where she was closer to the McCoys, who resided in Smithville. Ms. Freeman attested as follows that the McCoys promised to deed her the house when she moved to Cookeville:

> Q. So when you moved here, did you expect to be paid for your services you were giving?
>
> A. Yes, the house. They promised me the house, and that's what I expected. They were going to have it deeded to me.

However, in contradiction with this alleged intent to deed Ms. Freeman the house when she moved to Cookeville in September of 2000, in 2005, Mr. McCoy went to a lawyer and had his will drafted to provide that his property be left in trust for Mrs. McCoy with Ms. Freeman to serve as trustee. In that regard, Ms. Freeman admitted as follows that, under such circumstances, she would not have been entitled to the house until Mrs. McCoy's death:

> Q. The will named you as the trustee; and you understand, when it leaves you as trustee, you were supposed to spend the money for Mrs. McCoy from the trust. Do you understand that?
>
> A. Yes.
>
> Q. So it would not have been your money or your house –
>
> A. I understand that.
>
> Q. – until Mrs. McCoy died. Do you understand that?
>
> A. Yes.
>
> Q. And that's what he set up with a lawyer, with advice, in 2005, after these thirteen years of work that you had done for him. When he got to a lawyer and told what his situation was, that's what was drafted. Right?
>
> A. Yes.
>
> Q. Do you know if he asked [the lawyer] about a deed?
>
> A. He didn't ever tell me anything like that.

Finally, we note the testimony of attorney John Acuff who drafted Mrs. McCoy's will, executed in February of 2000, which provided that if Mr. McCoy predeceased Mrs. McCoy, Ms. Freeman would receive the house and that Ms. Freeman be named as a residuary beneficiary of the estate. Mr. Acuff remembered his conversation with Mrs. McCoy around the time her will was drafted and that he determined that she was competent at that time. He attested that Ms. Freeman was with Mrs. McCoy at the time of their meeting, that he and Mrs. McCoy discussed "what [Ms. Freeman] was getting and why she was getting it," that Mrs. McCoy did not ask any questions about creating a contract or express any interest in that regard, and that if she had asked him to prepare a deed, he would have done so.

While Ms. Freeman did present witness testimony in support of her allegation that the McCoys intended to deed the house on Dixie Park Drive to her during their lifetimes, the above

recounted testimony supports the trial court's contrary conclusion there was a meeting of minds that Ms. Freeman would be compensated for her services to the McCoys by the testamentary devise of the house. Bearing in mind the considerable deference we must accord the trial court in assessing the weight and credibility of witness testimony, and based upon our review of the record as a whole, we do not find that the evidence preponderates against the trial court's ruling.

C. Quantum Meruit

Ms. Freeman seeks compensation under the doctrine of quantum meruit. One of the prerequisites of a claim for quantum meruit damages is that there be "no existing, enforceable contract between the parties covering the same subject matter." ***Doe v. HCA Health Servs. of Tenn., Inc.***, 46 S.W.3d 191, 197-98 (Tenn. 2001). Having affirmed the trial court's ruling that there was an enforceable contract between the McCoys and Ms. Freeman pursuant to which she was bequeathed the Cookeville house as compensation for her services, we are compelled to conclude that there is no merit in Ms. Freeman's argument that the trial court erred in failing to award her quantum meruit compensation.

D. $20,000 Judgment

Ms. Freeman also contends that the trial court erred in awarding the defendants a judgment against her in the amount of $20,000. This amount represented funds retained by Ms. Freeman in August of 2006 from $28,000 in cash that was discovered in the McCoys' home by Ken Cabral while he was engaged in cleaning the home and exterminating mice that had infested the home. Mr. McCoy was still living when this money was found, and Ms. Freeman testified that Mr. Cabral was paid a portion of the $28,000 for his services and that Mr. McCoy gave her $20,000 of such funds as a gift. However, the trial court found that the $20,000 was not a gift and therefore ordered that Ms. Freeman pay such amount to the defendants. We find no error in this ruling.

As already indicated, we accord great deference to a trial court's assessment of witness credibility. It is apparent from statements made by the trial court after final argument that the trial court did not believe Ms. Freeman's testimony that the $20,000 was a gift. In this regard, the trial court stated that Ms. Freeman "didn't exactly shoot you straight as far as gifts" and found that the $20,000 was not a gift "based upon the credible proof." Ms. Freeman alludes to a comment made by the trial court to the effect that other monies that she received from Mr. McCoy in the amount of $10,000 *were* a gift and that the trial court was inconsistent in finding a gift as to the $10,000, but not as to the $20,000. However, the defendants did not request a return of the $10,000, and therefore, the issue of whether the $10,000 was actually a gift was not properly before the trial court. Because the trial court was not called upon to determine whether the $10,000 was a gift, its comment as to the proper categorization of the $10,000 was a dictum and, as such, will not suffice to undermine the trial court's decision with respect to the $20,000. Accordingly, we find no merit in Ms. Freeman's argument as to this issue.

IV. Conclusion

For the reasons stated herein, we affirm the judgment of the trial court. Costs of appeal are assessed to the appellant, Mary Elizabeth Freeman.

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SHARON G. LEE, JUDGE